International Institute of Islamic Thought

Chapter Title: Social Justice and Islamic Legal/Ethical Order: The Madinah Constitution as a Case Study from the Prophetic Period
Chapter Author(s): Katrin Jomaa

Book Title: Islamic Law and Ethics
Book Editor(s): David R. Vishanoff
Published by: International Institute of Islamic Thought. (2020)
Stable URL: https://www.jstor.org/stable/j.ctv19prr5b.11

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at https://about.jstor.org/terms

This book is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License (CC BY-NC-ND 4.0). To view a copy of this license, visit https://creativecommons.org/licenses/by-nc-nd/4.0/.

*International Institute of Islamic Thought* is collaborating with JSTOR to digitize, preserve and extend access to *Islamic Law and Ethics*

This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

7

# Social Justice and Islamic Legal/Ethical Order: The Madinah Constitution as a Case Study from the Prophetic Period

**Katrin Jomaa**

ABSTRACT: This paper analyses a case study from the prophetic period revealing how social justice is perceived from an Islamic perspective and how it is implemented in a legal setting. Prophet Muhammad established the first ummah in Madinah 622 CE through a constitution that organized the relations between Muslims, Jews and their allies. By analyzing the 47 decrees of this constitution, this paper explores a modern concern: how to organize differences in a pluralistic society legally and politically? Liberalism tolerates religious difference as long as it is confined to private practice, while one secular law dominates legal and public dealings. John Rawls proposes interaction based on the "veil of ignorance" in the political realm, where people interact publicly by stressing commonalities and ignoring/hiding private differences to avoid conflict. While the theory has been generally endorsed in the West, critiques attribute to its practice the absence of a sense of community, a lack of social cohesion, and injustices against minorities. One striking observation of the Madinah charter is its incorporation of religious and ethnic diversity in public through the constitution and through legal pluralism. Yet in matters that affect mutual dealings between the diverse communities, as well as common defense, the law becomes common. The layout of the constitution shows a buildup of multiple layers of rights and duties attributed to the respective communities. The ummah expanded from the Muslim community (along with its ethnic diversity) to incorporating the diverse Jewish community then



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

enlarged to include allies or individuals, hence the addressee at the end of the charter became *ahl al-ṣaḥīfah* ("the people of the constitution"). What is consistent across the Madinah charter is the way the public legal document mirrored the private differences, not only by acknowledging them but also by organizing its law around these differences. This paper reveals a new perspective on social justice where differences are not hidden in private, yet their public manifestation does not jeopardize social harmony. The charter puts into practice the Qur'anic ethical understanding of diversity as enriching humans' knowledge about their differences rather than dealing with them behind a "veil of ignorance".

This paper analyses a case study from the prophetic period revealing how social justice is perceived from an Islamic perspective and how it is implemented in a legal setting. The paper explores a question quite relevant to the modern period: how does the modern state deal with different religious communities from a social and political perspective? The liberal secular model tolerates religious difference as long as it is confined to private practice, while one secular law dominates legal and public dealings. One criticism of this model revolves around the concept of identity and the constant need for people to demonstrate a public identity different from their private one for acceptance and assimilation. John Rawls, the leading theorist of modern Liberalism, proposes public dealings performed behind a "veil of ignorance" where people interact publicly by stressing commonalities and ignoring or hiding private differences to avoid conflict. While the theory has been generally endorsed in the West, critiques attribute to its practice the absence of a sense of community, a lack of social cohesion, and injustices against disenfranchised communities.

Islamic ideology, based on the Qur'an and Prophetic practice, sheds a different light on this matter. Prophet Muhammad organized a multi-religious community upon his immigration to Madinah in 622. A copy of the constitution which united Muslims and Jews in that nascent civic ummah was preserved in the Prophetic *sīrah*. This


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

paper analyzes that constitution (comprising 47 decrees), along with the Qur'anic verses that descended in that period addressing the regulation of social, public and political relations between the different religious communities. This paper is part of a larger project exploring the concept of the ummah in the Qur'an (through the lens of four exegetical sources from the 9th century and the modern period) and the *sīrah*.

## Community versus Ummah

The first two decrees of the Madinah Constitution (MC)[1] define the members of the Madinah ummah. The MC begins by referencing itself as a book upon which the ummah is to be established. Its decrees clarify the goal of the ummah, the covenants established, and their common leader and land.[2] The first decree, "This is a book / written agreement / accord (*kitāb*) from Muhammad the Prophet (the Messenger of God) between the believers and Muslims of Quraysh and the people of Yathrib and those who follow them, join them and strive along with them," starts with identifying the different members belonging to that one ummah. Hence the term is an active term which reflects a source of identification rather than an established identity. This diverse ummah directly reflects the element of choice associated with the concept and also shows that the term ummah does not depict a closed society. Rather it is an open community for whoever wishes to join and abide by its goals and covenant. Religion (*dīn*) is not the common element among the members of the ummah, which is further clarified in decree 25: "The Jews of Banī ʿAwf, together with the believers constitute an ummah[3] (constitute an ummah from the believers),[4] the Jews having their religion/law (*dīn*) and the Muslims having their religion/law (*dīn*)…"

The Jews and believers form a common ummah, despite each possessing their own religion (*dīn*). Denny argues that the Jews were an ummah "alongside" the Muslims, and that the term ummah represents a closed community defined by common religion.[5] Denny supports his claim by proposing a theory of rupture: establishing a new community in Madinah necessitated a prior break with the old


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

ways of Christians, Jews and pagans; hence there was a continuous rupture with earlier traditions to establish the new order.[6]

Denny's interpretation can be challenged for several reasons. First, it is worth noting that the terms Jews and Muslims, not Jewish ummah and Muslim ummah, are used to refer to religious differences: "The Jews having their religion/law (*dīn*) and the Muslims having their religion/law (*dīn*)." However, ummah is the term used for describing both communities under one banner. Such inclusive phrasing is seen in decree 25, "The Jews of Banī ʿAwf, together with the believers constitute an ummah," and in the beginning of the constitution through use of the term *ummah wāḥidah*. *Ummah wāḥidah* is a Qur'anic term used to reflect unity before God; hence the goal of this ummah in Madinah was to unite the different groups. This strongly suggests that the term ummah does not refer to a group of people following a specific sharīʿah or *dīn*, rather it has broader implications as has been already shown. The Jews and the believers form an ummah united by the common four attributes mentioned earlier, which will be discussed in the ensuing decrees in greater detail.

Second, the inclusion of Jews and their law in the ummah and in the constitution reflects a desire to communicate with earlier traditions rather than forming a closed community breaking with them. On the other hand, the Prophet is described as the *ummī* prophet, foretold in earlier scriptures,[7] whose message confirms those earlier scriptures, and who acts as a guardian and witness to those earlier communities.[8] Thus, the Qur'anic message represents a continuation with earlier divine traditions, and Prophet Muhammad, whose Qur'anic model is prophet Abraham, functions as the father who embraces and unites all of them. The structure of the ummah reflects an ideological background in which not only are different religious groups respected, but also the different groups' religious laws.

Arjomand considers that the constitutional recognition of the Jewish religion represents the foundation of religious pluralism in Islam.[9] Islamic religious pluralism reflects the inclusive Qur'anic ideology which recognizes earlier communities as legitimately possessing the divine right to follow and implement their prescribed


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

sharīʿah, as was discussed in Qur'an 5:48, "To each among you, we have prescribed a law and a clear way…." Common ethical values, which form the essence of any divine revelation as expressed by the Qur'anic concept of *taṣdīq* (later revelation confirms previous ones), make possible the introduction of a common law to organize a pluralistic society, which nevertheless is based on divine scripture. This is what happened in Madinah.

Fred Donner thinks that the first ummah established in the early period of Islam was "confessionally open"[10] and had an ecumenical character as it enjoined the worship of God and the observance of God's law whether it be the Torah, the Gospel or the Qur'an. This early ummah, inclusive by nature, cut across the boundaries of confessional communities. Donner calls the first ummah the Believers' movement. Donner also argues that the inclusion of Jews in the early ummah of Madinah makes one skeptical of accounts reported in traditional sources about the Prophet's conflict with specific Jewish tribes. He thinks that these stories could have been greatly exaggerated or even fabricated by later Muslim tradition to depict Muhammad as a strong character.[11] In response to scholars who regard Prophet Muhammad's preaching as anti-Jewish, Donner says: "in view of the inclusion of some Jews in the Believers' movement, we must conclude that the clashes with other Jews or groups of Jews were the result of particular attitudes or political actions on their part, such as refusal to accept Muhammad's leadership or Prophecy. They cannot be taken as evidence of a general hostility to Judaism in the Believers' movement, any more than the punishment of certain of Muhammad's persecutors from Quraysh should lead us to conclude that he was anti-Quraysh."[12]

If the Prophet had not been sent to a universal ummah, and if the Qur'anic ideology had been exclusive, it would have been impossible to establish that united ummah in Madinah given its significant ethnic, religious and cultural diversity. Politically, Muhammad Mahdi Shams al-Din thinks that decree 25 reflects a political community that unites two communities following two different creeds. Its public order is based on Islamic values and led by Prophet Muhammad. Shams ad-Din calls it a "diverse contractual society"



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

which maintains diversity while simultaneously establishing unity.[13] The statement "the Jews together with the believers constitute an ummah" conveys that, while both the Jews and the believers are distinct communities having their own religion and law, neither group forms a separate political community on its own. In addition, decrees 33-35 acknowledge and confirm Jewish alliances that already existed before the arrival of Muslims in Madinah.

Decrees 2 and 25 are the only decrees in which the term ummah is mentioned. The remaining decrees of the charter discuss the ideas and governing relations between the members of the ummah. It describes the ummah's rights and obligations, thereby clarifying how its members will be judged and how to organize their life together. The first decrees (3–24) address the believers (*al-mu'minūn*). Decrees 25–36 specifically address the Jews (*al-yahūd*) and the remaining decrees (37–47) address the people of the document (*ahl al-ṣaḥifah*). There is one decree that addresses polytheists (20 B). The term Muslims is mentioned only three times, twice to differentiate them from Jews (25 & 37) and once in the beginning of the document.

Serjeant translates *mu'min* as someone who is secure or granted security (*amān*), a definition related to the linguistic root *ʾ-m-n*. Then he argues that the Jews formed a separate ummah parallel to the believers, and he therefore endorses the reading "*yahūd Banī ʿAwf ummatun maʿa al-mu'minīn*" ("The Jews of Banī ʿAwf are an ummah with the believers").[14] Denny does not agree with this translation because the constitution addresses all parties involved equally; it would be unlikely that only one party would be granted security and not others. He favors the translation "believers" instead of "those granted security."[15]

Rubin also translates *mu'minūn* as believers and endorses the second reading, "*yahūd Banī ʿAwf ummatun mina al-mu'minīn*" ("the Jews form an ummah of [a part of] the believers"). He supports his argument by noting that the preposition min typically follows ummah in the Qur'an, e.g. *ummatan min al-nās*, *umam min al-jinn wa al-ins*, etc. He adds that this reading better explains the use of the term *ummah wāḥidah* in the beginning of the document (second decree), diction that implies uniting all the different parties under


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

one ummah. Thus Jews are regarded as monotheistic believers distinguished from other monotheistic believers (e.g., Muslims who follow Prophet Muhammad). Rubin thinks that being recognized as believers in the MC granted them the privilege to practice their own *dīn*.[16] Arjomand combined the latter interpretations and translated *mu'minūn* as "faithful covenanters," referring to those who enjoy the security and protection of God through the covenant of Madinah, and he regards the MC as "the Covenant of Unity."[17]

Rubin's reading seems problematic for the constitution because there are decrees that clearly distinguish between Jews and believers (24, 38, 45). Decrees 24 and 38 use the preposition with (*maʿ*), stating that "Jews along with the believers shall bear (their own) war expenses during war." In addition, the first decrees (3–24) address the believers, while the decrees addressing the Jews (25–36) address them specifically as Jews. It appears that the terms believers and Muslims are used interchangeably in the context of the constitution, while we do not see that happen with the Jews. The reason may be attributed to the Qur'an's definition of believers: "The Messenger believes in what has been revealed to him from his Lord, and (so do) the believers (*al-mu'minūn*); they all believe in Allah and His angels and His books and His messengers; 'We make no distinction (they say) between one and another of His messengers.' And they say: 'We hear, and we obey: (We seek) Thy forgiveness, our Lord, and to Thee is the end of all journeys'" (2:285). The verse specifies that believers should not differentiate between God's messengers. In other Qur'anic verses, not distinguishing between any of God's prophets is directly correlated with submitting (acting as a Muslim).[18] Since the Jews do not recognize the prophecy of Jesus and Muhammad, they are distinguished from the believers who believed in all the prophets equally.

Fred Donner defines Muslim as "essentially, a committed monotheist, and Islam means committed monotheism in the sense of submitting oneself to God's will."[19] Therefore, the term Muslim encompassed Monotheists in general, including Christians and Jews. With time, the term Muslim starts to refer to 'new monotheists' who follow Qur'anic law.[20] Elsewhere I too have discussed the meaning



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

of the term Muslim in the Qur'an, through the character of Prophet Abraham and earlier prophets who were referred to as Muslims. 'Muslim' in the Qur'an does not merely describe followers of Prophet Muhammad, but those who have accepted the divine message in its totality and submitted in sincere devotion to God's will, which "entails taking action accordingly."[21] Donner's argument that Muslim in essence refers to a submitting monotheist is plausible, but that the term Muslim became confessionally exclusive with time can be challenged. The term Muslim is 'cumulative' and requires a new action with the coming of a new prophet as the Qur'anic verses cited in the previous paragraph show. This is due to the fact that the coming of a new prophet signals the annulment of the previous law and the endorsing of the new law. Insisting on following the previous law and rejecting the new one in essence defies the core meaning of submission, and hence forfeits the significance of the term Muslim. Muslim is not a static or dogmatic term that requires a belief fixed in time; rather it has a dynamic and cumulative characteristic that acquires a new flavor with the coming of a new prophet. The person who embodies that dynamic trait (Muslim) is required to act based on the arising circumstances of God's revelation. The latter happened frequently during the Prophet's time. For example, Muslims had to reorient themselves to a new *qiblah* (direction of prayer) when the descending revelation required it.

Therefore, the first reading of decree 25 that the Jews form an ummah with the believers (*yahūd Banī ʿAwf ummatun maʿa al-mu'minīn*) seems more feasible in the context of this constitution from a Qur'anic perspective. From a political perspective, the constitution's main goal is uniting the different groups and establishing peace in Madinah. Saying that the Jews are an ummah of believers has no political or unitary connotations, but saying that they form an ummah with the believers implies socio-political unity.

Moreover, changing the addressee in an expanding sequence also supports the element of addition. The constitution starts with the basic unit of the ummah represented by the believers, and then expands the ummah to include Jews, though they are distinguished as following their own religion. Moreover, the ummah expands to


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

include the respective communities' allies (*mawālī*) and protected persons (*jār*), privileging the latter identified members as well. Finally, the constitution begins to address its entire people (*Ahl al-Ṣaḥifah*). This cumulative addition, represented in changing the addressee terminology, shows that the *ummah wāḥidah*, in essence, is open to include whoever wills to be a member of it. It is not a closed society as Orientalists claim, and it does not merely represent a political confederation.[22]

The religious constituent in the MC is not equivalent to exclusive religious law (*dīn* or sharīʿah) applied to followers of a specific prophet and a divine book. This is confirmed in decree 25, in which each group is instructed to follow its own religious law. Rather, the religious foundation of the MC is reflected in the Qur'anic ideology behind its establishment. Belief represents the essence of its foundation. Believers form the founding unit or the building block for the embracing *ummah wāḥidah*. This is reflected in the terminology used in the MC. The word believers (*mu'minūn*) or its singular form (*mu'min*) is mentioned 32 times in the MC, while the word Muslims is mentioned only 3 times. The word Jews (*yahūd*) is mentioned 21 times. I think there is a significant point to be made here. Why is the word believers emphasized instead of Muslims? I would argue that this is not only meant to strengthen the relationships between Muslims and Jews and others by stressing commonalities, but also to emphasize another crucial point for everyone, Muslims included: belonging to the ummah requires choice and responsibility, not cultural, religious or ethnic affiliation. This critical point is related to the core concept of the ummah. Religion can be reduced to a set of rituals and practices, thereby losing its vigor. In order not to succumb to the problem of transforming belief into a passive affiliation (a problem emphasized in Qur'an 49:14–15)[23] the word believers was underscored.

## Decrees Addressing the Believers

Decrees 3–23 address the believers and clarify their duties and rights in the MC. Decrees 5–11 repeat the wording of decree 4 while


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

changing the name of the tribe being addressed:

> 4- The Banī ʿAwf are in charge of the management of their affairs, they shall continue to pay the costs of their bloodshed among themselves as has been the custom and each group shall ransom its war prisoner according to *maʿrūf* and equity (justice) among the believers.

Watt says that this organization shows that everything in the ummah is interpreted in terms of the kinship group.[24] Denny refutes Watt's claim and argues that the ummah is only arranged along kinship lines because the kinship system was the only means to describe and differentiate between the elements of the Arabian society.[25] Denny's argument is more feasible because by looking at the structure of the latter decrees, one will notice that each decree starts by addressing the specific name of a tribe and ends with common rules binding all believers, not just a specific tribe.

The second half of the decrees 3–11 are the same, "according to *maʿrūf* and equity among the believers" (*bi-l-maʿrūf wa al-qisṭ bayna al-muʾminīn*). Therefore, while using the tribe as a unit for organizing the pluralistic structure of the ummah, the MC did not judge each tribe by its own tribal rules, rather by the common rules binding all of them equally before the constitution. That is why each decree ends with the same binding statement, which identifies new regulations based on *maʿrūf* and justice between the believers.

*Maʿrūf* is a Qur'anic concept describing the action of the best ummah to be raised for mankind, an ummah that commands righteousness and deters wrongness while believing in God. The Qur'anic verses[26] mentioning this term relate *maʿrūf* to belief in God, similar to the decrees (according to *maʿrūf* and equity among the believers). *Maʿrūf*[27] is translated as "customary" by some scholars who argue that the Madinan ummah did not offer anything new to the Arabian society and was rather just maintaining Arab tradition.[28] This idea is refutable because the meaning of "*maʿrūf* and equity" is clarified in the remaining decrees that address the believers (12–23), where some decrees clearly contradict established Arabian customs preceding the coming of Prophet Muhammad. For example, decree 13 altered the


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

pre-Islamic Arabian understanding of crime from a tribal responsibility to an individual one.

Decree 13 states: "All God conscious believers shall be against the person who intends to commit an aggressive and unjust act among them, or who aims to infringe one's rights or to cause turmoil among believers. And even if this person is the offspring of one of them, they shall all raise their hands against him." In this case, kinship and tribal rules are forfeited for the sake of establishing peace and equity among the believers, regardless of tribal affiliations. However, the custom of pre-Islamic Arabia associates the guilt of offence with the whole tribe, not the individual criminal, as explained by Serjeant:

> To expiate the guilt of offence, the guilty *tribe* must execute one of its own members, not necessarily the actual murderer, or else the other tribes will unite and attack it, remaining at war until they have exacted proper atonement in the way of killings adequate to the heinous crime of violating the sanctity of the sacred enclave.[29]

Arranging the Madinan ummah along tribal lines did not mean a loss of individual responsibility at the expense of the tribe. This idea is implied in Arjomand's analysis where he claims that "the ummah was organized as a community of clans, not individuals."[30] Arjomand's argument is problematic because there is an amalgam of rights and responsibilities associated with both the tribe as a community unit within the ummah and the individuals as affiliated ummah members. This idea is discussed by Fadlallah[31] in his interpretation and explanation of the concept of *ummah wasaṭ*, which offers a middle position in community organization and does not overstress the rights of the community at the expense of the individual or vice versa.

Shams al-Din also addresses this point by saying that the decrees that refer to the different tribes and their functions reveal a considerable internal independence of each tribe in managing its internal affairs. However, this privacy and independence is restricted for the sake of the idea of one ummah in which different communities merge into one society. Thus, the tribes were not destroyed as a social unit, but were kept and even used to strengthen the spirit of


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

internal collaboration between the different parties.[32] The pluralistic structure did not threaten the unity of the ummah. This unity will be confirmed through studying the subsequent decrees (12–24), specifically decrees 12, 15, 17, 19, 22 and 23. In decrees 15 and 17 the word *wāḥidah* appears again, emphasizing the one common ummah for all:

> Decree 12: The believers shall not leave a *mufraḥ*[33] (one under financial burden) among them without giving him what is (established by) custom for ransom or blood-wit.
> 12 B- No believer shall oppose the *mawlā* (client/ally) of another believer. (According to another reading: No believer may enter into an agreement with the *mawlā* of another believer, so as to harm the latter.)

Decree 12 with its subsection reflects the mutual duties of believers. It may also reflect the concept of brotherhood (*mu'ākhāh*) established by Prophet Muhammad between the natives of Madinah and the recent immigrants. The institution of brotherhood was a critical step toward the final realization of the ummah. It facilitated reconciliation between the believers and increased their cohesion. The tribe and kinship were no longer the bonding link, and faith became the everlasting bond, as shown in Qur'anic verses referring to brotherhood in religion (*ikhwānukum fī al-dīn*).[34] The institution of *mu'ākhāh* was part of the development process from the tribe to the ummah.[35]

## Individual versus Collective Responsibility

Decree 13, discussed earlier, urges collective responsibility as well as stressing individual accountability to hold the offender responsible for his or her offensive act. This idea of shared responsibility among the members of the ummah was introduced in the Makkan verses[36] urging believers to carry out continuous reform (*iṣlāḥ*). Then the Madinan verses[37] practically elaborated on the idea by stressing the need for interaction, discussion, and mutual advice among different people of the ummah since all members share the same destiny. The Madinan verses culminated with the notion of the best ummah, the


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

successful one, whose belief will urge it to invite people to the good by enjoining righteousness and deterring wrongness (*ya'murūna bi-l-maʿrūf wa-yanhawna ʿan al-munkar*). The notion of being best instills in the ummah a culture of social and political obligations that are not dependent on a central power for implementation. This active ummah and its dynamic culture are inspired by a Qur'anic ideology that considers belief deficient if it does not blossom into right action and virtue in society.

Decrees 13 and 37[38] represent a practical realization of the Qur'anic concepts discussed thus far. An active ummah by default puts limitations on the central power. Again we may witness here a middle position best suited to realize politically the *ummah wasat*, where central power and ummah assume different responsibilities without either negating the other. Shams al-Din considers the ummah in this case to be equivalent to the political community. The ummah is responsible for maintaining its integrity and deterring evil and injustice irrespective of tribal or even kinship affiliations.[39]

> Decree 14: No believer shall kill another believer for the sake of an infidel or shall assist an infidel at the expense of a believer.

This emphasizes collaboration of the believers to protect and defend each other as a united ummah against any external threat. This condition reflects the common goal for establishing the ummah and Constitution of Madinah: establishing security and peace between the different tribes and members in Madinah after a long period of strife and war. Similarly, the persecuted believers who emigrated from Makkah to Madinah with the Prophet were mainly concerned with practicing their religion in a secure environment without fearing loss of life.

> Decree 15: The security (*dhimmah*) of Allah (for life and property) is the same for everyone; this protection (acknowledged by the least important of the believers) applies to them all. And the believers, some are allies of others who are apart from the rest of the people.

This decree confirms the goal introduced in decree 14 by


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

representing the concept of security as a covenant with God. The covenant represents one of the constitutive principles in the ummah.[40] In *Lisān al-ʿArab, dhimmah* means covenant, security, assurance, inviolability and right (*al-ʿahd wa al-amān wa al-ḍamān wa al-ḥurmah wa al-ḥaqq*).[41] This decree reflects the Qur'anic verses (16:92–93)[42] that emphasize the critical importance of upholding covenants 'equally' between weak and strong *umam*. The Qur'an supports its argument using metaphorical imagery comparing the established covenants to the threads forming a piece of yarn: the loss of one thread will lead to the destruction of the whole piece. Similarly, decree 15 states that protection by God is bestowed equally upon the lowliest of believers (in terms of prestige and material status) as on the most privileged. God does not discriminate based on societal status; rather, all are equal before Him. In one respect, associating security with a covenantal status and religious inviolability maintains security for the Madinan ummah. Arjomand considers that the indivisible protection of God over the community and its members strengthened the covenantal solidarity by providing it a new dimension.[43]

## Majority versus Minorities or Elite versus Marginalized

In another aspect, this decree again opposes established tribal values that consider the privileged more 'worthy' of protection in comparison to the marginalized. Shams al-Din translates the second part of the decree as "the believers are guardians of each other apart from the rest of the people." The decree reflects the equality of all people, irrespective of the statuses created by human societies. All members have the same rights including the right of giving protection to others, which was a right of only the most privileged in pre-Islamic Arabia but became the right of the least privileged as well in Madinah. All believers should acknowledge that right, honor it and endorse it because the security of God is the same for all believers. Shams al-Din concludes that the guardianship of believers (*wilāyah*) towards each other shows the responsibility of the ummah towards itself politically and reinforces the concept of *shūrā* practiced among the believers.[44]


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

Thus while keeping the basic structural unit of the society, the tribe, the MC introduced new modes of interaction based on Qur'anic ethics, which fosters a novel understanding of *ummah wāḥidah*. This unifying socio-political structure does not differentiate between its members based on kinship (decree 13), privileged status (decree 15) or religious difference (decrees 16 and 25–35). Rather, the *ummah wāḥidah* establishes its unifying order based on common principles of unbiased justice and equity.

Decree 16: "Among Jews, those who join (follow) us shall receive our assistance and equal treatment; they shall not be oppressed, nor shall we give assistance to their enemies" – is a clause of decree 15 whereby Jews who choose to join the ummah are also granted the indivisible protection of God under the common covenantal security of the MC. Hence the members or tribes of the MC should equally support them and not befriend their enemies; this implies that the enemies of the Jews become the enemies of the believers.[45] Shams al-Din says that equality extends to all parties involved in the socio-political contract. It is not only equality to believers of different status in society, but also to those of different religious background. The Jews here are granted support and equal treatment as long as they support the Muslims living with them in Madinah, and do not betray them or give assistance to their enemies.

> Decree 17: Peace is one among believers. No believer, in a war fought in the path of God, may agree to a peace accord by excluding other believers. This peace shall only be made among them (believers) according to the principles of equity and justice/fair dealing between them.

Shams al-Din thinks that decree 17 is a continuation of decree 15. This decree deals with peace treaties as a means to end war. It shows that being at peace or at war is a decision that cannot be taken by individuals. It is rather a collective decision of the whole ummah that results from *shūrā* and must "accord to the principles of equity and justice/fair dealing between them." Decree 15 talks about individuals. Any individual can give protection to another individual, such as a polytheist, and the rest of the ummah should accept this protection. Decree 15 is related to personal cases and it is not a political



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

obligation of the whole ummah. However, in decree 17, war making or peace making decisions cannot be taken by separate individuals, rather by the whole ummah.[46] This decree reflects the goal behind establishing the ummah of Madinah, which is indivisible peace and security to all. While decrees 12–16 organized individual, internal relationships between Madinah members, decrees 17–22 will organize their dealings with each other as one coherent group fighting external enemies.

> 18- Each raiding party which raids along with us – one shall succeed another.
> 19- Believers shall execute retribution on behalf of one another with respect to their bloodshed in the path of God.
> 20- Surely, God conscious believers follow the best and straightest path.
> 20-B No polytheist [affiliated with the community] may protect the life and property of a person affiliated with Quraysh nor can intervene with a believer in this matter.

Decrees 17–20 establish an internal cohesion between the members of the ummah in cases of war against them, and ends stating that this represents better guidance than that which was followed in pre-Islamic Arabia. The statement "*ʿala aḥsan hudan*" (following the best path/guidance) in decree 20 reflects the Qur'anic promise of bringing better guidance than that of the forefathers: "*Qul a-wa-law ji'tukum bi-ahdā mimma wajadtum ʿalayhi ābā'akum?*" (43:24). The terms *hudan* and *ahdā* have the same root and imply the same meaning. Decree 20B shows that there are polytheists who are recognized as affiliate members of the ummah but this is the only decree that mentions a polytheist and his obligation towards the ummah of Madinah. I think that polytheists were not recognized as an organized community in Madinah like the Jews or the believers, which explains why they do not show up in the remaining decrees of the MC. This decree may reflect a protected person or client of any member or community of the Madinan ummah who happens to be a polytheist.

Since the context of decrees 17–22 is related to war situations, it is conceivable that Quraysh and its affiliated members will be addressed


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

in the MC. Quraysh represents the main enemy of Prophet Muhammad and his followers, not only for its persecution of the believers and its expelling them from Makkah, but also because of its ideology. The word *mushrik* (polytheist), which represents the creed of Quraysh, opposes the word *mu'min* (believer) representing belief in one God. *Mushrik* means associating partners with God, implying following different directions or having different leaders. This usually leads to conflict and disunity, ultimately resulting in war and strife. On the other hand, the root of the word *mu'min* is *amn* (security), which comes as a direct result of belief in God and is due to the unifying power such belief instills in followers.

The socio-political conditions of strife and war in the pre-Islamic tribal society reflect the state of *shirk* (polytheism) endorsed by the pagan society. That state is contrasted with the peaceful state of the believers and the covenanted members of the one ummah, a state resulting from a unity inspired by belief in one common God and enacted through a treaty based on Qur'anic universal ethics. The Qur'anic inference of 'monotheistic belief versus *shirk*' and its socio-political consequences will be addressed in detail in decree 39. Decree 20B shows that polytheist confederates are part of the ummah through abiding by the decrees of the confederation; hence they cannot support their fellow polytheists of Quraysh or interfere with a believer in this matter. This decree shows again that religion does not form one of the constitutive principles of the ummah; rather, it is the covenant that relates and unites the members of the ummah.

## Public Norm & Individual Choice

21- If it is proven with certainty that one person has killed a believer (unjustly without a reason that necessitates killing), then it is his own responsibility unless the guardian of the victim grant him a pardon; and all believers shall be against him. And it is not permissible for the believers to fight for him.

22- It is not lawful for any believer approving the contents of this sheet (document) and believing in God and the Day of Judgment, to support or shelter an aggressor; whoever supports or shelters him shall receive the curse and wrath of God on the Day of Judgment, when financial compensation or sacrifice shall no longer be accepted.



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

23- In whatever thing you are at variance, its reference back (*maradd*) is to Allah and to Muhammad.

Decree 21 shows the individual's responsibility for a crime, rather than the individual's tribe or people. Simultaneously, it stresses the importance of the collective responsibility of the ummah in maintaining this norm (instead of tribal norms) and ensuring implementation: "all believers shall be against him." Decree 22 is a direct result of establishing one ummah because it again revokes the tribal order for the sake of the unified ummah. It emphasizes maintaining the public order in society instead of chaos and mischief. It also highlights the responsibility of the ummah to implement law as the ummah has guardianship over itself (*wilāyat al-ummah ʿala nafsihā*).[47]

Thus, both decrees link individual responsibility to the collective's, so that individuals cannot fulfill their obligations without the community's committing to establish a norm in society. At the same time, a community cannot maintain its norms and order without the contribution of each constituent member. Therefore, the success of the ummah is a direct result of fulfilling both obligations, the individual and the collective. It is the direct interaction between the two that creates a healthy balance in society and ensures the maintenance of order with the least need for intervention from a central power. Then it becomes possible genuinely to account for the rule of the people and understand the meaning of "the ummah's guardianship over itself" endorsed by Shams al-Din.

The collective obligation of the members of the ummah to fight an aggressor among them and hold him the only one responsible for his crime is emphasized only in the decrees addressing the believers. It is worth noting that this collective attitude is not present in the decrees addressing the Jews. The believers could not have implemented that constitutional norm if they were not educated accordingly, especially as it directly opposes established tribal norms. Hence we find the link in decree 22 between implementing decree 21 and believing in God and the Day of Judgment and fearing His wrath. This direct relationship reflects the Qur'anic education of the


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

believers for a period of thirteen years before they emigrated to Madinah to establish the ummah.

The Madinan verses addressing the collective commitment of the members of the ummah towards each other in enjoining right conduct and fighting aggression are directly implemented in decrees 21 and 22. These constitutional decrees represent a cultivation of the new Islamic values and norms taught by the Prophet in the pre-Hijrah period. Thus, there was a process of socialization before institutionalization. It is obvious from the Madinah constitution that the concept of socialization of norms is rendered seriously for the ummah's establishment and continuation. That is why there is a stress on the collective obligation of the believers in this transitional period. The Jews as a collective body are addressed differently (as will be discussed later) because the Jews of Madinah were not socialized in Islamic values like the Muslim immigrants.

Decree 22 invokes the concept of choice before requiring loyalty to the covenant between the affiliated members by saying "any believer approving the contents of this document." This statement shows that the MC came about through the agreement and consensus of its members, and explicitly states that they have willingly chosen to be part of the covenanted ummah. Consequently, they are obliged to assume the responsibility associated with their choice by upholding their covenant with each other. Strengthening their covenant is realized by equating their covenant with each other to taking a covenant with God. Hence, decree 22 associates revoking the covenant with provoking God's wrath and punishment.

Decree 23 comes directly after the decree requiring constitutional loyalty, which reflects that the judicial authority of Prophet Muhammad is also part of the covenant chosen and enacted by the covenanted members of the ummah. Thus, abiding by Prophet Muhammad's leadership in settling disputes is another form of upholding the agreed upon covenant. Prophet Muhammad's leadership is not above the constitution and therefore, it does not make sense to consider his authority a real theocracy as Denny claims.[48]



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

**Decrees Addressing the Jews**

Decree 24 – "Jews along with the believers shall bear (their own) war expenses as long as they are fighting" – is repeated in decrees 37 and 38. Shams al-Din regards this decree to be representative of a "political community." The responsibility of defending Madinah is a shared responsibility for all its residents because the beneficiary of the independence and safety is the whole political community.[49] Arjomand thinks that obligating the Jews to pay the war levy is the Prophet's condition in return for their protection by the law and assuring them religious tolerance.[50] I do not think that the war levy was imposed on the Jews, as Arjomand argues, because the same condition applies for the believers. It appears to be a shared duty of both communities in the ummah rather than a tax imposed on one community in return for granting equal rights.

In addition, the decree specifies that the Jews will pay the war levy "as long as they are fighting with the believers." This last condition implies that they do not have to pay the war levy if they are involved in fighting for communal defense. Decree 45, for example, distinguishes between a war for common defense, which is the duty of all affiliated members of the ummah, and a war for religious reasons, which would be carried out by one group without involving the other members of the ummah.

> 45- If they (the Jews) are invited (by the Muslims) to make and adopt a peace agreement, they shall make that agreement and adopt it; and if they (the Jews) suggest the same thing (to the Muslims), they shall have the same rights from the Muslims; except in cases of war over religious issues.
> 45-B) Each group is responsible for the area belonging to it (with regards to defense and other needs).

Therefore, if the Jews are not fighting alongside the believers in a war carried out for religious reasons, they do not have to pay the war levy since the decree explicitly states "as long as they are fighting." In conclusion, the decree is not an imposition by the Prophet; rather it is assuring that every group is equally and 'fairly' responsible for upholding its duties towards the one ummah.



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

> 25- The Jews of Banī ʿAwf, together with the believers, constitute an ummah, the Jews having their religion/law (*dīn*) and the Muslims having their religion/law (*dīn*). This includes both their *mawlā* and themselves personally. But whoever performs an unjust action or commits a crime shall harm solely himself and the people of his house.
> 26- The Jews of Banū al-Najjār shall have the same (rights) as the Jews of Banī ʿAwf.

Decree 25, as discussed earlier in detail, represents the pluralistic socio-political foundation of the ummah. The following decrees (26–35) basically mention each tribe by name to guarantee all of them the same rights as the tribe of Banī ʿAwf mentioned in decree 25. What is worth noting here is that the same tribes mentioned earlier as believers are mentioned again in decrees (25–30), but in this case represent Jews. There are six tribes (Banū ʿAwf, Banū al-Najjār, Banū al-Ḥārith, Banū Sāʿida, Banū Jashm and Banū al-Aws) mentioned both in decrees 4–8 and 11 as representing the believers, and in decrees 25–30 as representing the Jewish members of the tribes.

Therefore, the tribe is no longer the main source of affiliation and the ummah cannot be interpreted in terms of kinship as Watt argued, or in conformance with Arab tradition as Serjeant claimed.[51] Both arguments are problematic because the tribe was divided into two communities, or affiliated members, recognized by their religion and law (*dīn*) before their tribal affiliation. There would be no point in mentioning the believers of each tribe and then identifying their Jewish members, uniting them to form an ummah, if they were from the same tribe in the first place. What we witness in the MC is totally new – a dismantling of the Arabian society and tradition, replaced with a new form of affiliation according to new laws and a new social order. The tribe was kept as a 'secondary' source of affiliation because it was the only means to distinguish the elements of the society, as Denny rightly argued.[52] The ummah in the MC represents the primary form of affiliation for its members as shown in decrees 1–2 and 25. Religious and tribal affiliations are secondary. Thus, the ummah cannot be represented as a tribe or as a real theocracy, although it does include tribe as a form of social organization and religion as a personal right of affiliation.



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

Decrees that govern interactions of the members of both communities seem to be based on the religious law of each community. For example, we have already shown that the governing ideology of the decrees addressing the believers is the Qur'an, as referenced in decrees 13, 15, 17, 21 and 22. The decrees that address Muslims are identifiable from the use of specific expressions such as "according to the principles of justice and equity among the believers," or "God-conscious believers," or "*ḥalāl*." These decrees invoke in the believers a sense of collective responsibility by enjoining right conduct in society and forbidding wrongness, both directives being based on a belief in God and the Day of Judgment. We do not see similar decrees aimed at fostering communal action in the decrees addressing the Jews. This could be due to the difference between the teachings of Islamic and Jewish law. We notice that decree 25 explicitly states that the Jews have their own religion/law, which implies that the Jews are free in organizing their internal affairs based on Jewish law. However, there needed to be a way to insure stability in the ummah as a whole and prevent aggression between its different members.

Since Islamic values are specified as non-binding on the Jews, a different approach is used to preserve order and justice. For example, in decrees 25 and 31 "whoever performs an unjust action or commits a crime shall harm solely himself and the people of his house." If a Muslim commits an act of injustice, all Muslims are against the offender based on the Qur'anic teaching of enjoining goodness and deterring wrongness; for a Jewish offender the social pressure is exerted by the people of his house. In Jewish law, the Torah states "And he that kills any man shall surely be put to death…Breach for breach, eye for eye, tooth for tooth: as he has caused a blemish in a man, so shall it be done to him again" (Leviticus 24:17–20). The Jewish law allows for personal retaliation for a wound or harm, but there is no equivalent for the social pressure exerted by the community fostered in Islamic law.

Therefore, citing "the people of his house" as responsible for sharing blame[53] is a means to foster positive community relations among the Jews, hindering unjust acts and maintaining peace and


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

justice. In addition, decree 36 B – "It shall not be forbidden to take revenge of a wound. Surely if a person happens to kill another, both he and his family shall be responsible as a consequence, except if he kills one who acts wrongfully (*ẓalama*). God is with those who best obey this document" – clearly reflects Jewish law by allowing personal retaliation for a wound. This decree initially appears to contradict decree 21 that addresses the believers stating that "if a person kills a believer (unjustly), then it is his own responsibility unless the guardian of the victim grants him pardon; and all believers shall be against him…." The question raised here is: why can the killer of a believer be granted pardon from the believer's guardian, but for one who wounds a Jew, retaliation should be enacted? Al-Ṭabarī says that retribution for a murdered or wounded person was obligatory on Banī Isrā'īl, i.e., there was no *diyah* (blood wit) as compensation for murder or wound in Jewish law. However, God relieved the community of Muhammad by allowing them the option of paying blood money in cases of murder and injury if the family of the victim agreed to it.[54] Therefore, the difference between the decrees addressing the believers and those addressing the Jews in the case of murder and injury can be explained by referring to the difference between Islamic and Jewish law.

> 37- In the case of war Jews bear their expenses and the Muslims theirs. Surely they shall cooperate among themselves, in opposing those who wage war against the people designated on this sheet (document). There shall be good counsel and advice between them. Observation of one's undertakings eliminates treachery/breaking of treaties.
> 37.B- No one may commit a crime against his ally; surely the oppressed shall receive help.
> 38- Jews along with Muslims shall bear the expenses of wars fought together.

Starting with decree 37, the addressee changes into *Ahl al-Ṣaḥīfah* (the people of the constitution) to reinforce the feeling of socio-political unity. The decree implies external as well as internal threats because it invokes collaboration between both the Jewish and Muslim communities to stand together against anyone fighting the people of the constitution. The decree also declares that both com-


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

munities should interact with each other in good counsel and mutual advice, which implies deterring any internal threat from among them that could cause chaos and mischief between the two communities.

Decree 37 ends with a general unifying statement that defends the oppressed's rights, irrespective of his/her affiliation. At the same time it stresses the individual responsibility of an aggressor, stating that a human being cannot be accused of a sin committed by his ally. Despite the fact that allies have the same rights as the members of the community, responsibility for an act of aggression by an ally would not be shared by other members as well (following the same logic of rights). Instead, the aggressor must carry sole responsibility for his or her crime and justice will prevail in favor of the oppressed.

Decree 38 is the same as decree 24. Shams al-Din considers it to be a copying mistake by those who transmitted the constitution.[55] This assumption could be challenged. First, there is a possibility that we have two separate documents, one specifically addressing the Muslims and the other addressing the Jews. Second, despite the seeming repetition, decree 37 describes general threats (which include internal ones, and that is why there is the specific mention of allies), while decree 38 specifies external threats. Decree 38 is directly followed by specifying the sanctity of the land, which means that war cannot be conducted inside Yathrib (the previous name of Madinah). Thus, decree 38 specifically addresses cases of war against external threats, which should be conducted outside the borders of Madinah. It is not redundant; rather it is clearly emphasizing the specific duties and obligations. I think that decrees 38 and 39 could be joined together as one verdict.

## Decrees Addressing *Ahl al-Ṣaḥīfah* (the People of the Constitution): Sacred Land (*Ḥaram*)

> 39-On behalf of the people designated by this document (constitution), the Yathrib (*jawf*) constitutes a protected territory.

Decree 39 defines the borders of the land that contain the people addressed by the constitution. The concept of the ummah, in this



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

case, embraced the concept of the land within it. The land is considered sacred (*ḥaram*), which means that no wars are to be conducted within its borders. However, I think that the idea of a "sacred land" for the ummah has a deeper significance than what was stated. In traditional Arabia the concept of *ḥaram* or *ḥawṭah* signified a secure location established by a holy person or family in agreement with diverse neighboring tribes. The agreement allows different tribes to safely come together in this location and conduct business or resolve disagreements, etc., while all the affected parties pledge to preserve its sanctity and neutrality. Murder is one of the biggest offenses within the *ḥaram*.[56] Thus, the central point is securing a safe common area for the competing tribes. While there is a great emphasis on safety or security, there is also a need to provide a common, legitimate ground by which differences can be settled and negotiated. That is why a "holy" person or family establishes the *ḥaram*, because trust and legitimacy play a critical role in preserving the sanctity of the place and upholding the trust of the diverse tribes.

In the Qur'anic context, the *ḥaram* represents the center of peace and safety and is directly related to belief. The symbolism of peace and safety that is associated with the territorial piece of land is a direct result of believing in one God (in contrast to polytheism). In the Qur'an[57] the word *ḥaram* is defined by contrasting it with a state of fear, anxiety and disorder. The Qur'an invokes the spiritual dimension of the word *ḥaram* by highlighting the contrast between safety, associated with belief, and fear, associated with giving power to other entities besides God (polytheism).

The relationship between the security of the land and the belief in one God is traced back historically to the prayer of Prophet Abraham,[58] which implies that spiritual belief and peace will result in the betterment of the ummah's physical life by bringing sustenance in abundance; hence the word *balad* is used, which refers to a physical piece of land or country. Thus, there is a direct relationship between belief in God and receiving His sustenance and security, while those who reject belief are drawn to fear and anxiety (Qur'an 29:67) and hell as a final abode (Qur'an 2:126).

In another Qur'anic verse, Abraham's prayer is accepted and



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

again the theme of security and asylum is stressed in the context of the Kaʿbah (first house on earth erected for the worship of God): "And (remember) when We made the House (the Kaʿbah at Makkah) a place of resort for mankind and a place of safety. And take then the place whereon Abraham once stood as your place of prayer" (2:125).

The Kaʿbah is described in another verse as *al-Bayt al-Ḥarām*, the sacred house, whereby the connotation of the word *ḥaram* is more clarified: "Allah made the Kaʿbah, the Sacred House (*al-Bayt al-Ḥarām*), *qiyāman* for the people, and so too the sacred months, the offerings and the sacrificial animals with garlands; that you may know that God is aware of all that is in the heavens and all that is on earth, and that God has full knowledge of everything" (5:97). The word *qiyāman* has been translated differently by exegetes because it has no counterpart in the English language. However, the interpretation of this word is critical for exploring the word *ḥaram. Qiyām* is translated by al-Qurṭubī as both 1) maintaining a livelihood by establishing Shariʿah (law), and 2) a basis and support.[59] Al-Ṭabarī said that the *qiyām* or *qiwām* of a thing is the means by which it is rectified. For example, the great king is the *qiwām* of his people because, through him, people's affairs are managed, their enemies are pushed away, and oppressors are withheld from those potentially oppressed.[60] The king's rules could be equivalent to Shariʿah later. We can combine the meanings as "establishing founding principles that support and maintain a peaceful and righteous livelihood." The sanctity of the Kaʿbah (*ḥarām*) is a derivative of its symbolic function in maintaining a peaceful livelihood for the people through establishing an ethical base governing their interaction with each other (*qiyām*). The same argument goes for the sacred months and rituals.

I think it is significant that in the constitution the word "*jawf*" is used to describe the inside of Madinah in decree 39: "the Yathrib *jawf* constitutes a *ḥaram*." *Jawf* is defined in *Lisān al-ʿArab* as the interior or core of something. The *jawf* of a human being is his or her interior, and mainly refers to the abdomen. The *jawf* of a land is the portion of the land that is most stable (*mā ittasaʿa wa-ṭma'anna faṣāra ka*


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

*al-jawf*) and covers an area broader and deeper than a single valley. *Jawf* also describes the center.[61] I think that the word *jawf* is used in the constitution not just to describe a physical area of land, but also to convey a metaphorical significance.

The *jawf* of Madinah is described as sacred to stress again the connotation of sacredness of the core or essence, the center of the ummah of Madinah. The basis of unity for this new community is not territory, as Rubin claims,[62] and is not merely a political confederation, as previously discussed; it is a unity based on making the sacred represent its essence and core. This sacredness is manifest physically in the land where no bloodshed or oppression is allowed. It is also manifest in the just rules governing people's interaction with each other resulting in peace, as well as in its leadership.

The idea of the sacred being the center and its critical importance in preventing or dealing with conflict is shown in decrees 23 and 42. Decree 42 addresses all the people of the constitution: "whatsoever aggression/misdemeanor or quarrel that occurs between the people designated on this sheet, which is feared to cause dissension, will be referred to Allah and his messenger Muhammad." In both decrees, the centrality of God and his Messenger as the arbiter for resolving conflict enforces the connection between peace and the sacred. It also shows the interconnection between the different decrees in the constitution and the consistency in its formation.

> 40- The protected person is like (one's) self, he shall not be oppressed nor shall he commit any crime.
> 41- A woman shall not be accorded protection except by permission of her people.

Decrees 40 and 41 extended the protection enjoyed by the Madinah members to one's neighbors based on the custom of *ijāra* (making one a neighbor). However, the MC requires conditions in return for protection, first that a protected person should not commit a crime and second, that women should have the permission of their family beforehand.

Decree 39, which specifies borders, is directly followed by clarifying the neighboring borders in decrees 40 and 41. Defining



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

who belongs to the ummah is not achieved by alienating the other, which is considered the same as the self. The latter represents a critical difference between the concept of the ummah and that of the nation state, which establishes itself by demeaning or alienating the different other. "The process of othering is a facet of the collective identity building that is related to a specific territory and refers to the building of the figure of the foreigner, the neighbor, the Other."[63] Bordering territories to create a nation state is obsessed with state sovereignty as well as security from external aggression. Randy Widdis defines the borderland as "a physical, ideological, and geographical construct, a region of intersection that is sensitive to internal and external forces that both integrate and differentiate communities and eras on both sides of the boundary line."[64] The ummah is not invested in creating boundaries, or ideological with respect to differentiating its members from outside members who represent a threat. In contrast, diversity is part of the internal structure of the ummah, resulting in accepting diversity from outside its borders as well. That is why the neighbor is framed as a friend deserving protection rather than as an enemy suspect of aggression. The physical boundary of the ummah is used as a symbol of peace and the sacred to unify members of the ummah and restrain them from aggression against each other. Aggression is not regarded differently outside or inside the borders; it is one and the same – no double standards! Aggression against any human being, whether a member of the ummah or not, is equally despised in the eyes of God. The ummah is open to whoever would like to abide by its ethics, hence its borders are porous and welcoming ideologically and physically. As shown in this paper, the concept of the ummah kept expanding by including more diverse members. In early Islamic history, the boundaries were expanded so that more nations, ethnicities and religious groups became part of the ummah. In this process of expansion, boundaries that separate people from each other were destroyed. In the early caliphate system, the ummah is sovereign, and not the state (or political power), contrary to the modern nation state.

The next decree confirms that the ummah is invested with


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

evading aggression among its members more than outside aggression.

> 42- Whatsoever aggression/misdemeanor or quarrel that occurs between the people designated on this sheet, which is feared may cause dissension, will be referred to Allah and his messenger Muhammad. Allah is (surety) for the truest and most righteous observance of what is in this document.

This decree reaffirms decrees 23 and 36 that assign judiciary authority to Prophet Muhammad; however the addressee in this decree is not only the believers or the Jews, but rather the united ummah of the constitution (*Ahl al-Ṣaḥīfah*). This decree reflects the Qur'anic verse 5:48[65] which assigns the governance of the ummah to its book and judgment to the one knowledgeable of its book. The book (*kitāb*) precedes the function of the judge and legitimizes the judge in the latter part of the verse. Hence the decree started by addressing the people of the constitution before assigning the Prophet the role of judge and ended with emphasizing that the people should follow its rules to ensure God's surety. Emphasizing God before the Prophet is critical because it makes the law objective, not subjective and biased to serve the elite or the privileged. In the same regard, if the law is objective in regards to aggression in general, there should be no difference between aggressive acts inside or outside the borders.

> 43- Neither Quraysh nor those assisting them shall receive protection.
> 44- There shall be cooperation among them (Muslims and Jews) against those who invade Yathrib.
> 45- If they (the Jews) are invited (by the Muslims) to make and adopt a peace agreement, they shall make that agreement and adopt it; and if they (the Jews) suggest the same thing (to the Muslims), they shall have the same rights from the Muslims; except in cases of war over religious issues.
> 45-B) Each group is responsible for the area belonging to it (with regards to defense and other needs.)

Decrees 43–45 address the defense of Madinah by calling for mutual participation of its members in war and peace, and singles out a common enemy. Quraysh represents the main opponent of


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

Muslims as it drove the Prophet and his followers out of their hometown, besides its persecution of Muslims. It is important to note that this is a specific case in which part of the ummah had an existing conflict with a tribe, rather than defining outsiders in general as a potential threat. Nevertheless, Quraysh did not represent a threat to the people of Madinah until Prophet Muhammad and his followers entered the city. In order to solve this problem, the Prophet adopted two strategies. First, it was expected that Quraysh would attack the Muslims in their new land (Madinah), so the Prophet cited Quraysh as an enemy to the general defense of Madinah, a space that is declared sacred (*ḥaram*) for all its inhabitants. Second, to ensure equality for all affiliated members of the MC, the Prophet obligated both communities, Muslims and Jews, to respect and support each other in peacemaking and in war.

Therefore, the Jews were not obligated to consider Quraysh as an enemy for the sake of the Muslim members in Madinah without expecting reciprocal support from the Muslims. However, decree 45 singles out religious war as a potential point of contention, which is understandable because the two communities have different religious affiliations. Serjeant interprets this decree as a deterrent from one of the parties entering into a peace agreement to preserve their own interests at the expense of the others.[66] In both cases, the decrees ensure the rights of both communities while maintaining unity by constantly reminding them of their common goals. Decree 45 B is a continuation of decree 45 as it makes each community responsible for defending the area within its domain.

Decree 47 represents a summary of the major points iterated in the whole constitution:

> 47- This book (*kitāb*) shall not protect the perpetrator of an unjust act or crime from punishment. Whoever goes out shall have security and whoever remains in Madinah shall also have security; except one who commits an unjust act or a crime. Allah protects the person who observes undertakings and keeps free of dishonorable acts and offences, and Muhammad the messenger of Allah, Allah bless and honor him.


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

## Conclusion

The Madinah constitution describes an inclusive ummah receptive to any human being who is willing to be affiliated with its inclusive values. Many scholars and exegetes interpreted this global ummah, described in the Qur'an as '*ummah wāḥidah*', to be an ummah of a common humanity defined by a common innate nature (*fiṭrah*). That inclusive ummah does not eliminate religious, cultural or political diversity but acknowledges them as respected choices with merited consequences.

The constitution, with its principles and values, represents the foundation that unites the diverse communities of the ummah into one shared body, *ummah wāḥidah*. The decrees reflect different kinds of pluralism. Religious pluralism is manifested by inclusion of Muslims and Jews within the ummah, each community following its own religion and law. Cultural pluralism appears through the mentioning of each tribe by its own name, thereby reinforcing the connection between the private and public spheres. Political pluralism is evident from the way the constitution details reciprocal rights and obligations for its diverse communities.

Different decrees urge the members of the ummah to actively oppose an aggressor among them, even if a member of their kin. Thereby it portrays an active ummah assuming the responsibility of maintaining and implementing justice between its members and not confining the responsibility to the central power. In addition, mutual advice and consultation are urged between the various communities. The latter concepts are critical as societal public norms are used to enforce individual responsibilities, a concept alien to the structure of a modern state where laws are enforced by coercive central power, as the modern society represents a summation of alienated individuals rather than fellow members of one society.

Another noticeable feature of the Madinah constitution is its incorporation of religious and ethnic diversity in public through the constitution as a law document and through legal pluralism. Yet in matters that affect the mutual dealings between the religious communities and ethnic groups, as well as defense of the common



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

territory, the law becomes common. The layout of the constitution shows a buildup of multiple layers of rights and duties attributed to the respective communities. What is consistent across the Madinah charter is the way the legal public document mirrors the private differences, not only by acknowledging them but also by organizing its law around these differences.

The ummah expanded from the Muslim community (along with its ethnic diversity) to incorporate the diverse Jewish community, then enlarged to include allies or individuals, hence the addressee at the end of the charter became *Ahl al-Ṣaḥīfah* (the people of the constitution). Associated with the latter term, a new concept is introduced, *ḥaram* (sacred land). This term implies peace, security and trust, which represent desired goals for the flourishing of the ummah. Contrary to the nation state, the bordering is not created to alienate the neighboring other and protect its members from outside aggression. Rather, the Ḥaram represents a symbol of peace for the ummah members which is aimed at constant expansion by welcoming more members to the ummah, thereby destroying boundaries that separate people from each other.

This paper shows a new perspective about social justice where differences are not hidden in private, yet their public manifestation does not jeopardize social harmony. The MC also addresses the individual citizen as a complete human being, rather than a number among many. This is evident in the ways the MC balanced between the elite and the marginalized as well as between the individual and the community. The charter puts in practice the Qur'anic ethical understanding of diversity as enriching humans' knowledge about their differences rather than dealing with them behind a "veil of ignorance."


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

## REFERENCES

Arjomand, Said Amir, 'The Constitution of Medina: A Sociolegal Interpretation of Muhammad's Acts of Foundation of the Ummah', *International Journal of Middle East Studies* 41 (2009), pp.555–75.

Denny, Frederick, 'Community and Salvation: The Meaning of the Ummah in the Qur'ān'. Ph.D. dissertation, University of Chicago, 1974.

Denny, Frederick, 'The Meaning of Ummah in the Quran', *History of Religions* 15(1) (August, 1975), pp.39–42.

Denny, Frederick, 'Ummah in the Constitution of Medina', *Journal of Near Eastern Studies* 36(1) (January 1977), pp.39–47.

Donner, Fred M., *Muhammad and the Believers: At the Origins of Islam* (Cambridge: The Belknap Press of Harvard University Press, 2010).

Fadlallah, Muhammad Husayn, *Min waḥy al-Qur'ān* (Beirut: Dār al-Malāk, 1998).

Giannakis, Elias, 'The Concept of Ummah', *Graeco-Arabica* 2 (1983) pp.103–4.

Guillaume, A., *The Life of Muhammad: A Translation of Isḥāq's Sīrat Rasūl Allāh* with Introduction and Notes. (Oxford: Oxford University Press, 1955; reprinted Karachi, 1967).

Hamidullah, Muhammad, *Majmūᶜat al-Wathā'iq al-Siyāsiyyah* (Cairo: Lajnat al-Ta'līf wa al-Tarjamah wa al-Nashr, 1941).

Ibn Hisham, Abu Muhammad ᶜAbd al-Malik, *al-Sīrah al-Nabawiyyah*. (Ed.), Suhayl Zakkār (Beirut: Dār al-Fikr, 1992).

Ibn Kathīr, Abū al-Fidā' al-Ḥāfiẓ, *al-Bidāyah wa al-Nihāyah* (Beirut: Maktabat al-Maᶜārif, 1966.).

Ibn Manzur, *Lisān al-ᶜArab* (Beirut: Dār Iḥyā' al-Turāth al-ᶜArabī, 1993).

Ibn Sallam, Abu ᶜUbayd, *Kitāb al-Amwāl*. (Ed.), M. Khalil Haras (Cairo: Maktabat al-Kullīyāt al-Azhariyyah, 1968).

Jomaa, Katrin, 'A Conceptual Analysis of Umma in the Quran and Sunna and the Aristotelian Polis'. Ph.D. dissertation, Indiana University, 2012.

Lecker, Michael, *The "Constitution of Medina": Muhammad's First Legal Document* (Princeton, NJ: The Darwin Press, 2004).

Meier, Daniel, 'Bordering the Middle East', *Geopolitics* 23 (2018), pp.495–504.

Pickthall, Muhammad, *The Glorious Quran: Text and Explanatory Translation* (New York: Mostazafan Foundation of New York, 1984.).

al-Qurṭubī, Abū Abd Allāh Muḥammad ibn Aḥmad al-Anṣārī, *al-Jāmiᶜ li-Aḥkām al-Qur'ān* (Beirut: Dār Iḥyā' al-Turāth al-ᶜArabī, 1985).

Rubin, Uri, '"The Constitution of Medina": Some Notes', *Studia Islamica* 62 (1985), pp.5–23.

Serjeant, R.B., 'The Sunnah Jami'ah, Pacts with the Yathrib Jews and the Tahrim of Yathrib: Analysis and Translation of the documents comprised in the so-called



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

"Constitution of Medina"', *Bulletin of the School of Oriental and African Studies* 41(1) (1978), pp.1–42.

Serjeant, R.B., 'The Constitution of Medina', T*he Islamic Quarterly* 8 (1964), pp.3–16.

Serjeant, R.B., 'Haram and Hawtah, the Sacred Enclave in Arabia', in *Mélanges Taha Hussein*. (Ed.), Abdurrahman Badawi (Cairo: Dār al-Maᶜārif, 1962), pp.41–58.

Shams al-Din, Muhammad Mahdi, *Fī al-Ijtimāᶜ al-Siyāsī al-Islāmī* (Beirut: al-Mu'asassah al-Jāmiᶜiyyah lil-Dirāsāt wa al-Nashr, 1992).

al-Ṭabarī, Abū Jaᶜfar Muḥammad ibn Jarīr, *Jāmiᶜ al-Bayān* (Beirut: Dār al-Fikr, 1995).

al-Ṭabaṭabā'ī, Muḥammad Ḥusayn, *al-Mīzān fī Tafsīr al-Qur'ān* (Beirut: Mu'asassat al-Aᶜlamī lil-Maṭbūᶜāt, 1983).

al-Wāqidī, Muḥammad ibn ᶜUmar, *Kitāb al-Maghāzī*. (Ed.), Marsden Jones (London: Oxford University Press, 1966).

Watt, W. Montgomery, *Muhammad at Medina* (Oxford: Clarendon Press, 1956).

Yusuf Ali, Abdullah, *The Meanings of the Illustrious Qur'ān: English Translation with Introduction* (New Delhi: Kitab Bhavan, 2000).



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

## APPENDIX A

### THE MADINAH CONSTITUTION[67]

1) This is a book (*kitāb*) from Muhammad the Prophet (the Messenger of God) between the believers and Muslims of Quraysh and the people of Yathrib and those who follow them, join them and strive along with them.

١- هذا كتاب من محمد النبي (رسول الله) بين المؤمنين والمسلمين من قريش و(أهل) يثرب ومن تبعهم فلحق بهم وجاهد معهم.

2) They are one ummah (*ummah wāḥidah*) apart from the people.

٢- أنهم أمة واحدة من دون الناس.

3) The *muhājirūn* (migrants) of Quraysh are in charge of the management of their affairs, they shall defray the cost of bloodshed among themselves and shall join in ransoming their war prisoners according to *maʿrūf* and equity (justice) among the believers.

٣- المهاجرون من قريش على ربعتهم يتعاقلون بينهم وهم يفدون عانيهم بالمعروف والقسط بين المؤمنين.

4) The Banū* ʿAwf are in charge of the management of their affairs, they shall continue to pay the costs of their bloodshed among themselves as has been the custom and each group shall ransom its war prisoner according to *maʿrūf* aand equity (justice) among the believers.

٤- وبنو عوف على ربعتهم يتعاقلون معاقلهم ألاولى، وكل طائفة تفدي عانيها بالمعروف والقسط بين المؤمنين.

5) The Banū al-Ḥārith (…)

٥- وبنو الحارث (بن الخزرج) على ربعتهم يتعاقلون معاقلهم ألاولى، وكل طائفة تفدي عانيها بالمعروف والقسط بين المؤمنين.

6) The Banū Sāʿida (…)

٦- وبنو ساعدة على ربعتهم يتعاقلون معاقلهم ألاولى، وكل طائفة تفدي عانيها بالمعروف والقسط بين المؤمنين.

7) The Banū Jashm (…)

٧- وبنو جشم على ربعتهم يتعاقلون معاقلهم ألاولى، وكل طائفة تفدي عانيها بالمعروف والقسط بين المؤمنين.

8) The Banū al-Najjār (…)

٨- وبنو النجار على ربعتهم يتعاقلون معاقلهم ألاولى، وكل طائفة تفدي عانيها بالمعروف والقسط بين المؤمنين.



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

9) The Banū ʿAmr bin ʿAwf (…)

٩- وبنو عمرو بن عوف على ربعتهم يتعاقلون معاقلهم ألاولى، وكل طائفة تفدي عانيها بالمعروف والقسط بين المؤمنين.

10) The Banū al-Nabīt (…)

١٠- وبنو النبيت على ربعتهم يتعاقلون معاقلهم ألاولى، وكل طائفة تفدي عانيها بالمعروف والقسط بين المؤمنين.

11) The Banū al-Aws (…)

١١- وبنو ألاوس على ربعتهم يتعاقلون معاقلهم ألاولى، وكل طائفة تفدي عانيها بالمعروف والقسط بين المؤمنين.

12) The believers shall not leave a *mufraḥ*[68] (one under financial burden) among them without giving him what is (established by) custom for ransom or blood-wit.

١٢- وأن المؤمنين لا يتركون مفرحًا بينهم أن يعطوه بالمعروف في فداء أو عقل.

12B) No believer shall oppose the *mawlā* (client/ally) of another believer. (According to another reading: No believer may enter into an agreement with the *mawlā* of another believer, so as to harm the latter.)

١٢ب- وأن لا يخالف مؤمن مولى مؤمن دونه.

13) All God conscious believers shall be against the person who intends to commit an aggressive and unjust act among them, or who aims to infringe one's rights or to cause turmoil among believers. And even if this person is the offspring of one of them, they shall all raise their hands against him.

١٣- وأن المؤمنين المتقين (أيديهم) على (كل) من بغى منهم، أو ابتغى دسيعة ظلم، أو اثمًا، أو عدوانًا، أو فسادًا بين المؤمنين، وأن أيديهم عليه جميعًا، ولو كان ولد أحدهم.

14) No believer shall kill another believer for the sake of an infidel or shall assist an infidel at the expense of a believer.

١٤- ولا يقتل مؤمن مؤمنًا في كافر، ولا ينصر كافرًا على مؤمن.

15) The security (*dhimmah*) of Allah (for life and property) is one; (a protection acknowledged by the least important of the believers) applies to them all. And the believers, some are allies of others apart from the rest of the people.

١٥- وأن ذمة الله واحدة يجير عليهم أدناهم، وأن المؤمنين بعضهم موالي بعض دون الناس.

16) Among Jews, those who join (follow) us shall receive our assistance and equal treatment; they shall not be oppressed, nor shall we give assistance to their enemies.

١٦- وأنه من تبعنا من يهود فإن له النصر وألاسوة غير مظلومين ولا متناصر عليهم.



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

17) Peace is one among believers. No believer, in a war fought in the path of God, may agree to a peace accord by excluding other believers. This peace shall only be made among them (believers) according to the principles of equity and justice/fair dealing between them.

١٧- وأن سلم المؤمنين واحدة، لا يسالم مؤمن دون مؤمن في قتال في سبيل الله،إلا على سواء وعدل بينهم.

18) Each raiding party which raids along with us -- one shall succeed another.

١٨- وأن كل غازية غزت معنا يعقب بعضها بعضًا.

19) Believers shall execute retribution on behalf of one another with respect to their blood shed in the path of God.

١٩- وأن المؤمنين يبئ بعضهم عن بعض بما نال دماءهم في سبيل الله.

20) Surely, God-conscious believers follow the best and straightest path.

٢٠- وأن المؤمنين المتقين على أحسن هدى وأقومه.

20B) No polytheist [affiliated with the community] may protect the life and property of a person affiliated with Quraysh nor can intervene with a believer in this matter.

٢٠ب- وأنه لا يجير مشرك مالاً لقريش ولا نفسًا، ولا يحول دونه على مؤمن.

21) If it is proven with certainty that one person has killed a believer (unjustly without a reason that necessitates killing), then it is his own responsibility unless the guardian of the victim grant him a pardon; and all believers shall be against him. And it is not permissible for the believers to fight for him.

٢١- وأنه من اعتبط مؤمنًا قتلاً عن بينة فإنه قود به،إلا أن يرضى ولي المقتول (بالعقل)، وأن المؤمنين عليه كافة وإنه لا يحل لهم الاقتتال عليه.

22) It is not lawful for any believer approving the contents of this sheet (document) and believing in God and the Day of Judgment, to support or shelter an aggressor; whoever supports or shelters him shall receive the curse and wrath of God on the Day of Judgment, when financial compensation or sacrifice shall no longer be accepted.

٢٢- وأنه لا يحل لمؤمن أقرّ بما في هذه الصحيفة، وآمن بالله واليوم الآخر أن ينصر محدثًا أو يؤويه، وأن من نصره، أو آواه، فإن عليه لعنة الله وغضبه يوم القيامة، ولا يؤخذ منه صرف ولا عدل.

23) In whatever thing you are at variance, its reference back (*maradd*) is to Allah and to Muhammad.

٢٣- وأنكم مهما اختلفتم فيه من شيء، فإن مردّه إلى الله والى محمد.



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

**Decrees Addressing the Jews**

24) Jews along with the believers shall bear (their own) war expenses as long as they are fighting.

٢٤- وأن اليهود ينفقون مع المؤمنين ما داموا محاربين.

25) The Jews of Banī ʿAwf, together with the believers constitute an ummah; the Jews having their religion/law (*dīn)* and the Muslims having their religion/law (*dīn*). This includes both their *mawlā* and themselves personally. But whoever performs an unjust action or commits a crime shall harm solely himself and the people of his house.

٢٥- وأن يهود بني عوف أمة مع المؤمنين، لليهود دينهم وللمسلمين دينهم، مواليهم وأنفسهم إلا من ظلم وأثم، فإنه لا يوتغ إلا نفسه وأهل بيته.

26) The Jews of Banī al-Najjār shall have the same (rights) as the Jews of Banī* ʿAwf.

٢٦- وأن ليهود بني النجار مثل ما ليهود بني عوف.

27) The Jews of Banī* al-Ḥārith shall have the same (rights) as the Jews of Banī ʿAwf.

٢٧- وأن ليهود بني الحارث مثل ما ليهود بني عوف.

28) The Jews of Banī Sāʿida shall have the same (rights) as the Jews of Banī ʿAwf.

٢٨- وأن ليهود بني ساعدة مثل ما ليهود بني عوف.

29) The Jews of Banī Jashm shall have the same (rights) as the Jews of Banī ʿAwf.

٢٩- وأن ليهود بني جشم مثل ما ليهود بني عوف.

30) The Jews of Banī al-Aws shall have the same (rights) as the Jews of Banī* ʿAwf.

٣٠- وأن ليهود بني ألاوس مثل ما ليهود بني عوف.

31) The Jews of Banī Thaʿlabah shall have the same (rights) as the Jews of Banī* ʿAwf. But whoever performs an unjust action or commits a crime shall harm solely himself and the people of his house.

٣١- وأن ليهود بني ثعلبة مثل ما ليهود بني عوف، إلا من ظلم وأثم، فإنه لا يوتغ إلا نفسه وأهل بيته.

32) The Jafnah (family) is a branch of the Thaʿlabah [tribe] and because of this they shall be considered as the Thaʿlabah.

٣٢- وأن جفنة بطن من ثعلبة كأنفسهم.



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

33) The Banū al-Shuṭaybah shall have the same rights as the Jews of Banī* ʿAwf. Observation of one's undertakings eliminates treachery/breaking of treaties.

٣٣- وأن لبني الشطيبة مثل ما ليهود بني عوف، وأن البر دون إلاثم.

34) The clients/allies of Thaʿlabah shall be considered as Thaʿlabah themselves.

٣٤- وأن موالي ثعلبة كأنفسهم.

35) Those associated with Jews (by alliance and bonds of mutual protection) shall be considered as Jews themselves.

٣٥- وأن بطانة يهود كأنفسهم.

36) Among them (Jews) none may go (on a military campaign with the Muslims) without the permission of Muhammad.

٣٦- وأنه لا يخرج منهم أحد إلا بإذن محمّد.

36B) It shall not be forbidden to take revenge of a wound. Surely if a person happens to kill another, both he and his family shall be responsible as a consequence, except if he kills one who acts wrongfully (*ẓalama*). God is with those who best obey this document.

٣٦ب- وأنه لا ينحجز على ثأر جرح، وأنه من فتك فبنفسه وأهل بيته إلا من ظلم وأن الله على أبر هذا.

37) In case of war Jews bear their expenses and the Muslims theirs. Surely they shall cooperate among themselves, in opposing those who wage war against the people designated on this sheet (document). There shall be good counsel and advice between them. Observation of one's undertakings eliminates treachery/breaking of treaties.

٣٧- وأن على اليهود نفقتهم، وعلى المسلمين نفقتهم، وأن بينهم النصر على من حارب أهل هذه الصحيفة، وأن بينهم النصح والنصيحة والبر دون إلاثم.

37B) No one may commit a crime against his ally; surely the oppressed shall receive help.

٣٧ب- وأنه لا يأثم امرؤ بحليفه، وأن النصر للمظلوم.

38) Jews along with Muslims shall bear the expenses of wars fought together.

٣٨- وأن اليهود ينفقون مع المؤمنين ما داموا محاربين.



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

**Decrees Addressing *Ahl al-Ṣaḥīfah* (the People of the Constitution)**

39) On behalf of the people designated by this document (constitution), the Yathrib (*jawf*) constitutes a protected territory.

٣٩- وأن يثرب حرام جوفها لاهل هذه الصحيفة.

40) The protected person is like (one's) self, he shall not be oppressed nor shall he commit any crime.

٤٠- وأن الجار كالنفس غير مضارّ ولا آثم.

41) A woman shall not be accorded protection except by permission of her people.

٤١- وأنه لا تجار حرمة إلا بإذن أهلها.

42) Whatsoever aggression/misdemeanor or quarrel that occurs between the people designated on this sheet, which is feared may cause dissension, will be referred to Allah and his Messenger Muhammad. Allah is (surety) for the truest and most righteous observance of what is in this document.

٤٢- وأنه لا ما كان بين أهل هذه الصحيفة من حدث، أو اشتجار يخاف فساده، فإن مردّه إلى الله والى محمد رسول الله (صلى الله عليه وسلّم)، وأن الله على أتقى ما في هذه الصحيفة وأبرّه.

43) Neither Quraysh nor those assisting them shall receive protection.

٤٣- وأنه لا تجار قريش ولا من نصرها.

44) There shall be cooperation among them (Muslims and Jews) against those who invade Yathrib.

٤٤- وأن بينهم النصر من دهم يثرب.

45) If they (the Jews) are invited (by the Muslims) to make and adopt a peace agreement, they shall make that agreement and adopt it; and if they (the Jews) suggest the same thing (to the Muslims), they shall have the same rights from the Muslims; except in cases of war over religious issues.

٤٥- واذا دعوا إلى صلح يصالحونه ويلبسونه فإنهم يصالحونه ويلبسونه، وأنهم إذا دعوا إلى مثل ذلك، فإنه لهم على المؤمنين إلا من حارب في الدين.

45B) Each group is responsible for the area belonging to it (with regards to defense and other needs.)

٤٥ب- على كل أناس حصتهم من جانبهم الذي قبلهم.



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

46) The Jews of al-Aws, their *mawlā* and themselves, shall have the same rights agreed upon on this sheet (document), with sincere/complete observation from the people designated on this sheet. Observation of one's undertakings eliminates treachery/breaking of treaties. He who commits a breach (of this treaty) commits it against himself alone. God is with those who best and truly observe the rules described on this sheet.

٤٦- وأن يهود ألاوس مواليهم وأنفسهم على مثل ما لاهل هذه الصحيفة مع البر المحض من اهل هذه الصحيفة، وأن البر دون إلاثم لا يكسب كاسب إلا على نفسه، وأن الله على اصدق ما في هذه الصحيفة وأبره.

47) This book (*kitāb*) shall not protect the perpetrator of an unjust act or crime from punishment. Whoever goes out shall have security and whoever remains in Madinah shall also have security; except one who commits an unjust act or a crime. Allah protects the person who observes undertakings and keeps free of dishonorable acts and offences, and Muhammad the Messenger of Allah, Allah bless and honor him.

٤٧- وأنه لا يحول هذا الكتاب دون ظالم اوآثم، وأنه من خرج امن ومن قعد امن بالمدينة، إلا من ظلم وأثم، وأن الله جار لمن برّ واتقى، ومحمد رسول الله (صلى الله عليه وسلم).



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

NOTES

1. The full text and a translation may be found in Appendix A.
2. On the constituent features of the term ummah in the Qur'an, see Katrin Jomaa, 'A Conceptual Analysis of Umma in the Quran and Sunna and the Aristotelian Polis' (Ph.D. dissertation, Indiana University, 2012).
3. A reading is argued by Michael Lecker where he replaced umma by *amina* (secure) based on an Indian edition which was remarked by later editors to be inaccurate. However, Lecker still supported the reading (*amina*). Lecker's argument seems problematic for a simple grammatical reason, because if *amina* (in a verb or a noun form) was used, it has to be conjugated in the plural form to match the noun (the Jews). The reading argued by Lecker is in singular form, which is grammatically impossible. In Michael Lecker, *The "Constitution of Medina" Muhammad's First Legal Document* (Princeton, NJ: The Darwin Press, 2004), 139.
4. A different reading in Abū ʿUbayd Ibn Sallām, *Kitāb al-Amwāl*. (Ed.), M. Khalil Haras (Cairo: Maktabat al-Kullīyāt al-Azhariyyah, 1968), p.147. Also Ibn Kathīr, *al-Bidāyah wa al-Nihāyah* (Cairo: Maktabat al-Maʿārif, 1932), vol.1, p.43.
5. Frederick Denny, 'Community and Salvation: The Meaning of the Umma in the Qur'ān' (Ph.D. dissertation, University of Chicago, 1974), p.214.
6. Ibid., p.246.
7. For a detailed analysis about the relationship between the *ummī* Prophet and the ummah, see Jomaa, 'A Conceptual Analysis of Umma', pp.57–64.
8. Ibid., pp.137–39.
9. Said Amir Arjomand, 'The Constitution of Medina', *International Journal of Middle East Studies* 41 (2009), p.560.
10. Fred M. Donner, *Muhammad and the Believers: At the Origins of Islam* (Cambridge: The Belknap Press of Harvard University Press, 2010), p.69.
11. Ibid., pp.69–75.
12. Ibid., p.74.
13. Muhammad Mahdi Shams al-Din, *Fī al-Ijtimāʿ al-Siyāsī al-Islāmī* (Beirut: al-Mu'asassah al-Jāmiʿiyyah lil-Dirāsāt wa al-Nashr, 1992), pp.293–95.
14. R.B. Serjeant, 'The Sunnah Jami'ah, Pacts with the Yathrib Jews and the Tahrim of Yathrib: Analysis and Translation of the Documents Comprised in the So-Called "Constitution of Medina"', *Bulletin of the School of Oriental and African Studies* 41(1) (1978), pp.12–14.
15. Frederick Denny, 'Ummah in the Constitution of Medina', *Journal of Near Eastern Studies* 36(1) (January 1977), p.43.
16. Uri Rubin, '"The Constitution of Medina": Some Notes', *Studia Islamica* 62 (1985), pp.13–16.
17. Said Amir Arjomand, 'The Constitution of Medina', pp.562–64.


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

18. The same phrase occurs elsewhere in the Qur'an. "Say, [O believers], 'We have believed in Allah and what has been revealed to us and what has been revealed to Abraham and Ishmael and Isaac and Jacob and the Descendants and what was given to Moses and Jesus and what was given to the prophets from their Lord. We make no distinction between any of them, and we are Muslims [in submission] to Him'" (2:136). "Say, 'We have believed in Allah and in what was revealed to us and what was revealed to Abraham, Ishmael, Isaac, Jacob, and the Descendants, and in what was given to Moses and Jesus and to the prophets from their Lord. We make no distinction between any of them, and we are Muslims [submitting] to Him'" (3:84).
19. Donner, *Muhammad and the Believers*, pp.71–72.
20. Ibid., p.72.
21. Jomaa, 'A Conceptual Analysis of Umma', pp.90–100.
22. Rubin, '"The Constitution of Medina"', p.12. Rubin presents a survey of different scholars, such as Wellhausen, Wensinck, Watt, Serjeant, and Gil, reducing the ummah of Madinah to a mere political confederation.
23. "The desert Arabs (Bedouins) say, 'We believe (*āmannā*).' Say (to them, O Muhammad), 'You did not believe; but rather say, "we have surrendered" (*aslamnā*), for faith has not yet entered your hearts. Yet if you obey Allah and His Messenger, He will not belittle any of your deeds: for Allah is Forgiving, Most Merciful.' Indeed the believers are only those who have believed in Allah and his messenger and have never since doubted, and have striven with their wealth and their selves in the way of Allah, such are the truthful ones" (49:14–15). The verses address the problem of following a religion superficially by confessing adherence to it or merely endorsing its public manifestation. Belief, on the other hand, necessitates taking action by "striving with the wealth and the self." The same idea is stipulated in the first decree of the constitution, which describes the members covenanted to establish the ummah as "… those who follow them, join them and strive along with them." Thus, it is evident that establishing an ummah requires a choice and an ongoing responsibility to adhere to that choice.
24. W. Montgomery Watt, *Muhammad at Medina* (Oxford: Clarendon Press, 1956), p.242.
25. Denny, 'Community and Salvation', p.216.
26. "Let there be from among you (*minkum*) an ummah inviting to the good (*khayr*) and enjoining righteousness and deterring wrongness (*ya'murūna bi al-maʿrūf wa yanhawna ʿan al-munkar*) and those are the successful" (3:104). "You are (*kuntum*) the best (*khayr*) ummah ever raised up for mankind for you enjoin righteousness and deter wrongness and believe in God, and if the people of the book were to believe it would have been better for them, among them are believers but most of them are transgressors" (3:110). For a discussion of these verses see Jomaa, 'A Conceptual Analysis of Umma', pp.127–34.


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

27. Translated as "customary" by R.B. Serjeant and Arjomand, "uprightness" by Denny, and "proper" by Bulac.
28. R.B. Serjeant, 'Haram and Hawtah, the Sacred Enclave in Arabia', in *Mélanges Taha Hussein*. (Ed.), Abdurrahman Badawi (Cairo: Dār al-Maᶜārif, 1962), pp.41–58.
29. Ibid., p.47. Emphasis added.
30. Arjomand, 'The Constitution of Medina', p.565.
31. Jomaa, 'A Conceptual Analysis of Umma', pp.116–117.
32. Shams al-Din, *Fī al-Ijtimāᶜ al-Siyāsī al-Islāmī*, p.293.
33. In another reading *mufraj* (one turned Muslim among a people to whom he does not belong).
34. Qur'an 9:11. Also Qur'an 49:10: "The believers are but brethren, therefore make peace between your brethren and be careful of (your duty to) Allah that you may have His mercy."
35. Elias Giannakis, 'The Concept of Ummah', *Graeco-Arabica* 2 (1983), pp.103–4.
36. Jomaa, 'A Conceptual Analysis of Umma', pp.75–80.
37. Ibid., 127–34.
38. "Decree 37- In the case of war Jews bear their expenses and the Muslims theirs. Surely they shall cooperate among themselves, in opposing those who wage war against the people designated on this sheet (document). There shall be good counsel and advice between them. Observation of one's undertakings eliminates treachery/breaking of treaties. 37.B- No one may commit a crime against his ally; surely the oppressed shall receive help."
39. Shams al-Din, *Fī al-Ijtimāᶜ al-Siyāsī al-Islāmī*, p.295.
40. Jomaa, 'A Conceptual Analysis of Umma', pp.49–57.
41. Ibn Manzur, *Lisān al-ᶜArab* (Beirut: Dār Iḥyā' al-Turāth al-ᶜArabī, 1993), vol.5, pp.59–60.
42. See Jomaa, 'A Conceptual Analysis of Umma', pp.54–57.
43. Arjomand, 'The Constitution of Medina', p.566.
44. Shams al-Din, *Fī al-Ijtimāᶜ al-Siyāsī al-Islāmī*, pp.296–97.
45. Serjeant reports an incident mentioned in Ibn Isḥāq/Ibn Hishām: "In a quarrel, Abu Bakr struck Finḥāṣ the Jew, adding that but for the pact (ᶜ*ahd*) between them, he would have cut off his head. Finḥāṣ went for redress to Muhammad as head of the *Muhājirūn* and Muhammad rebuked Abu Bakr." Serjeant, 'The Sunnah Jami'ah', p.22. Cf. A. Guillaume, *The Life of Muhammad* (Oxford: Oxford University Press, 1955; reprinted Karachi, 1967), p.263.
46. Shams al-Din, *Fī al-Ijtimāᶜ al-Siyāsī al-Islāmī*, pp.297–298.
47. Shams al-Din, *Fī al-Ijtimāᶜ al-Siyāsī al-Islāmī*, p.300.
48. Denny claims that "Medina developed into a real theocracy" in Denny, 'Ummah in the Constitution of Medina', p.47.
49. Shams al-Din, *Fī al-Ijtimāᶜ al-Siyāsī al-Islāmī*, p.301.
50. Arjomand, 'The Constitution of Medina', p.567.


This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms

51. Serjeant, 'Haram and Hawtah', p.48.
52. Denny, 'Ummah in the Constitution of Medina', p.45.
53. Serjeant, 'The Sunnah Jami'ah', p.31.
54. Ibid.
55. Shams al-Din, *Fī al-Ijtimāᶜ al-Siyāsī al-Islāmī*, p.305.
56. Serjeant, 'Haram and Hawtah', pp.45–47.
57. "Do they not see that We have set up a secure sanctuary (*ḥaram āmin*), while people are ravaged all around them? Will they, then, [continue] to believe in falsehood and deny God's blessings?" (29:67).
58. "And, lo, Abraham prayed: 'O my Sustainer! Make this a land secure (*baladan āminan*), and grant its people fruitful sustenance – such of them who believe in God and the Last Day.' [God] answered: 'and whoever shall deny the truth, I will let him enjoy himself for a short while – but in the end I shall drive him to suffering through fire: and how vile a journey's end'" (Qur'an 2:126).
59. Al-Qurṭubī, *al-Jāmiᶜ li-Aḥkām al-Qur'ān* (Beirut: Dār Iḥyā' al-Turāth al-ᶜArabī, 1985), vol.6, p.325.
60. Al-Ṭabarī, *Jāmiᶜ al-Bayān* (Beirut: Dār al-Fikr, 1995), vol.5, p.104.
61. Ibn Manzur, *Lisān al-ᶜArab*, vol.2, pp.421–23.
62. Rubin, '"The Constitution of Medina"', p.10.
63. Daniel Meier, 'Bordering the Middle East', *Geopolitics* 23 (2018), p.500.
64. Quoted in Ibid., p.501.
65. "And to you We revealed *al-kitāb* in truth, confirming the Scripture that came before it and a guardian (*muhaymin*) over it (old Scriptures). So judge between them by what Allah has revealed, and follow not their vain desires, diverging away from the truth that has come to you. To each among you, We have prescribed a law and a clear way (*shirᶜatan wa minhājan*). If Allah willed, He would have made you one ummah, but that (He) may test you in what He has given you; so strive as in a race in all virtues. The return of you (all) is to Allah; then He will inform you about that in which you used to differ." This verse is discussed in Jomaa, 'A Conceptual Analysis of Umma', pp.137–39.
66. Serjeant, 'The Sunnah Jami'ah', p.38.
67. Muhammad Hamidullah, *Majmūᶜat al-Wathā'iq al-Siyāsiyyah* (Cairo: Lajnat al-Ta'līf wa al-Tarjamah wa al-Nashr, 1941), pp.1–7.
68. In another reading *mufraj* (one turned Muslim among a people to whom he does not belong).



This content downloaded from 74.115.7.55 on Mon, 10 Mar 2025 19:41:26 UTC
All use subject to https://about.jstor.org/terms